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JUN 25 1947CHARLES ELWOOD ORSTLEY  
CLERKSUPREME COURT OF THE  
UNITED STATES

OCTOBER TERM, 1947

No. 148HUMBLE OIL & REFINING COMPANY, ET AL., *Petitioners*,

v.

UNITED STATES OF AMERICA, *Respondent*PETITION FOR A WRIT OF CERTIORARI  
To the United States Circuit Court of Appeals, Fifth  
Circuit, at New Orleans, Louisiana,  
AND BRIEF IN SUPPORT THEREOF

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✓ M. G. ECKHARDT,  
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JACOB S. FLOYD,  
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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

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No. \_\_\_\_\_  
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HUMBLE OIL & REFINING COMPANY, ET AL., *Petitioners,*

v.

UNITED STATES OF AMERICA, *Respondent*

## PETITION FOR A WRIT OF CERTIORARI

*To the Honorable, The Supreme Court of the United States:*

The petition of Humble Oil & Refining Company and the other parties joining herein respectfully show this Honorable Court:

A.

### Summary Statement of the Matter Involved

The suit is one in condemnation, instituted under the authority of Title 40, Chapter 3, Par. 257, U. S. C. A. (R. 17). The public use for which the lands were taken was establishment of the Corpus Christi Naval Air Training Station in Nueces County, Texas (R. 18). Peremptory decree expropriating the land was entered in accordance with the provisions of Title 40, Chapter 3, Par. 258a, U. S. C. A. (R. 33). The trial, therefore, involved only the issue of damages, as to the award of which, Petitioners now complain—the

sum awarded amounting only to a fractional part of the true value (R. 142).

The inadequacy of the award—and, therefore, the instant complaint—arose from the Trial Court's refusal to apply a well recognized—and important—principle of local law.

The land condemned is a part of a currently producing oil field, the southern portion of which was carved out of leases owned by the oil company petitioners, and which were actively producing oil at the time the proceedings were instituted by the Government (R. 285).

Under Texas law, therefore, the minerals were "severed" from the surface of the land, and were as separate and distinct from the surface as though they were different tracts or bodies of land, lying hundreds—or thousands—of miles apart.

Petitioners sought to have the issue of damages as to the minerals tried separately from the issue of damages as to the surface—the same as the issue of damages for the taking of the several different tracts of land was tried—which was the proper procedure under Texas law (R. 587, 634). The Trial Court, however, treated the minerals as a "component" part of the surface, under the so-called "unit" rule which prohibits the separate assessment of diverse increments of value (R. 587, 589, 591, 593, 594, 633, 636, 640, 642, 643). Under this theory the jury predicated its assessment of damages for the taking upon testimony of the Government witnesses who gave estimates as to the *aggregate* value of the two estates, as though they were mere component parts of a single freehold; and the petitioners were denied the right, which was a material one, of having assessment made, under local law, for the value of each separate freehold standing alone.

This clearly was error for, under Texas law, where the ownership of minerals is different from ownership in the

surface, neither is a "component" of the other, any more than a tract of land in New York could be a component part of a tract of land in Florida. This rule of local law is well recognized in Texas and is not only important in Texas jurisprudence, it is *vital*. So important is the principle that:

(1) Adverse possession of one estate under such conditions as to mature title to it by limitation, will not mature title in the other. *WALLACE v. HOYT*, 225 S.W. 425; *GRISOM v. ANDERSON* (Tex. Sup. Ct.), 79 S.W. (2d) 619, and cases cited therein; *RIO BRAVO OIL CO. v. MC-ENTIRE* (Tex. Sup. Ct.), 95 S.W. (2d) 381, 96 S.W. (2d) 1110.

(2) The doctrine of merger cannot apply, because, once severed, each estate is of equal dignity—foreign to the other—and there is no servient estate to be merged in the dominant one. *HUMPHREYS-MEXIA CO. v. GAMMON*, 254 S.W. 296, at p. 301, et seq.

(3) The surface estate and the mineral estate, after severance are so foreign to each other that they are subject to separate taxation. *TEXAS COMPANY v. DAUGHERTY*, 107 Tex. 226, 176 S.W. 717, L.R.A. 1917F 989; *WEST v. COM. INT. REV.*, 150 Fed. (2d) 723.

The Circuit Court of Appeals, Fifth Circuit, sustained the Trial Court, holding, contrary to Texas law, that:

" \* \* \* we find no authority which holds that surface rights and mineral rights are such separate estates as to require separate trials as to valuation." (R. 782.)

The controlling question presented by this petition, is reflected by the concluding statement in the written opinion of the Circuit Court:

"Moreover every ruling of the Court was in favor of appellants (petitioners) *save the request to try the issues as to mineral values and surface values separately.*" (R. 783.)

The question thus presented is whether or not the general concept shall prevail, that mineral and surface estates are to be treated as increments of value in one "whole;" or whether, in condemnation proceedings involving Texas land, the local law shall be followed which treats mineral and surface estates, after severance, as separate "wholes" each as distinct and foreign to each other as though they were separate tracts of land.

#### B.

(1) The Circuit Court has decided an important question of local law, in a way that is in conflict with applicable local decisions, in this: The court of last resort in Texas holds that the execution of a mineral lease effects such a horizontal "severance" of the minerals from the surface of the land that from thenceforth the two estates are as foreign and distinct from each other as the east half of a tract of land would be from the west half, after a *vertical* severance of one from the other; so that, the severed mineral estate and surface estate each have the attributes of a distinct "whole," and cannot be components of the other.

Humphreys-Mexia Co. v. Gammon, 113 Tex. 247, 254 S.W. 296;

Stephens County v. Mid-Kansas Oil & Gas Co. (Tex. Sup. Ct.), 254 S.W. 290;

Armstrong v. Humble Oil & Refining Co., 145 S.W. (2d) 692;

Wallace v. Hoyt, 225 S.W. 425;



Grissom v. Anderson (Tex. Sup. Ct.), 79 S.W. (2d) 619;

Rio Bravo Oil Co. v. McEntire (Tex. Sup. Ct.), 95 S.W. (2d) 381, 96 S.W. (2d) 1110;

Texas Company v. Daugherty, 107 Tex. 226, 176 S.W. 717, L.R.A. 1917F 989.

The Circuit Court has held that the two estates are *not* of such a separate character as to require separate evaluation—and are, therefore, but component parts of each other. The importance of the question presented is self-evident, when it is borne in mind that oil is Texas' greatest industry and questions involving the *status* of mineral titles in Texas overshadow every other question presented to the courts for review.

(2) The Circuit Court has rendered a decision in conflict with applicable decisions of this Court, in this: This Court has held, generally, that the local law of the State, as enacted by its legislature or declared by its highest court, shall govern in actions tried in Federal Courts.

Erie Railway Co. v. Tompkins, 304 U.S. 64;

Ruhlin v. New York Life Ins. Co., 304 U.S. 202.

The Circuit Court, in the case at bar, has refused to apply the local law of Texas, stating that surface "rights" and mineral "rights" are not such separate *estates* as to require separate evaluation.

(3) The Circuit Court of Appeals, Fifth Circuit, in the case at bar, has rendered a decision in conflict with the decision of the Circuit Court of Appeals, Eighth Circuit, in the case of U. S. v. BECKTOLD COMPANY, 129 Fed. (2d) 473, in this: In the BECKTOLD case the Court held that the Government, as condemnor, must accept the status of the

title to land as fixed by local law and try the issue of damages in accordance with the status of the title as thus determined. The Circuit Court of Appeals, Fifth Circuit, in the instant case has refused to apply the law of Texas, fixing the status of the title held by the mineral and surface owners as separate and independent estates; and has held, in effect, that the law of Texas is inapplicable in a condemnation proceeding instituted by the Federal Government, in so far as the local law gives each severed estate the attributes of separateness and distinctiveness, one from the other.

Your petitioners constitute three groups: (1) The owners of the mineral estates in the various tracts condemned; (2) The owners of the surface estates and royalties in the various tracts condemned; (3) The owners of royalty interests.

Group (1) are: Humble Oil & Refining Company, Flour Bluff Oil Corporation, and Barnsdall Oil Company.

Group (2) are: Eagle Lake Improvement Company, Solar Oil Company, Executors under the will of Clara Driscoll, deceased, Mrs. Willie Marks Webb, and Mrs. F. E. Singleton.

Group (3) are: Clyde Porter, Mrs. Stephen Bettley, Royalties Management Corporation, Mrs. Marjorie M. McKinley, Mrs. Rose Haworth Tenney, Mark C. Meltzer, Jr., Mrs. Marian D. Mason, Raymond M. Gunnison, D. C. Everest, Robt. S. Clair, Robt. M. Winslow, Aldar Realty Co., Mrs. Dorothy T. Fales, Austin K. Neftel, Mrs. Alice A. Phelan, Thos. G. Blakeman, Alexander Deussen, and Carl Brannan.

WHEREFORE, Petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that Court to certify and to send to this Court for its review and determina-

tion, on a day certain, to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 11723, Eagle Lake Improvement Company, et al., Appellants, versus United States of America, Appellee, and that the judgment of said Court may be here reversed, and that Petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your Petitioners will ever pray.

HUMBLE OIL & REFINING COMPANY  
AND THE OTHER ABOVE NAMED  
PETITIONERS,

By \_\_\_\_\_

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# SUPREME COURT OF THE UNITED STATES

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v.

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## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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I.

### The Opinions of the Courts Below

(A) The Trial Court filed no memorandum or opinion.

(B) The opinion in the Circuit Court of Appeals, Fifth Circuit, is not yet officially reported. It is numbered 11723

on the docket of that Court, styled **EAGLE LAKE IMPROVEMENT COMPANY, ET AL., v. UNITED STATES OF AMERICA**, and is dated March 5, 1947. It appears on pages 779 to 783 of the Record.

(C) On a former appeal of the case, the Circuit Court reversed the judgment of the Trial Court, in which the Circuit Court, at least by inference, recognized and applied the Texas law of severance, and gave effect to the separateness of the mineral and surface estates. See **EAGLE LAKE IMPROVEMENT COMPANY v. U. S.**, 141 Fed. (2d) 562.

## II.

### Jurisdiction

(A) Jurisdiction is vested in this Court to issue the writ applied for by virtue of the provisions of **JUDICIAL CODE**, Section 240, as amended by the Act of February 13, 1925, 43 Stats. 938.

(B) Application is made under the provisions of Rule 38, Section 5(b), **RULES OF SUPREME COURT, UNITED STATES**.

(C) The judgment to be reviewed is dated March 5, 1947 (R. 784), and the Petition for Rehearing (R. 785), timely filed, was denied on April 1st, 1947 (R. 789), on which date the judgment of the Circuit Court of Appeals, Fifth Circuit, became final.

## III.

### Statement of the Case

A full statement of the case and the questions presented for review are set forth under heading "A," pages 1 to 4 in the petition.

## IV.

**Specifications of Errors**

(A) The Circuit Court of Appeals, Fifth Circuit, erred in holding that the mineral "rights" and surface "rights" were not such separate *estates* as to require separate evaluation; contrary to the holdings of the court of last resort of Texas, that the two severed estates are as foreign to and distinct from each other as two separate tracts of land.

(B) The Circuit Court of Appeals, Fifth Circuit, erred in refusing to apply the local law of Texas, as that law is announced by the State's court of last resort, in accordance with the ruling of this Court to the effect that the local law of a State, as enacted by its legislature or announced by the State's highest judicial tribunal, will be applied in cases pending and tried in Federal Courts.

(C) The Circuit Court of Appeals erred in refusing to apply the *lex loci res sitae* to the status of the the title to the property condemned, and in holding, in effect, that the Texas doctrine of "severance" did not apply to mineral lands subjected to condemnation by the Federal Government.

## V.

**Summary of the Argument**

The points of the Argument follow the "Reasons Relied on for the Allowance of the Writ," Part "B" of the Petition, page 4 to 6, and will not be repeated, but merely referred to for brevity in presentation.

## Argument

### Point A

**The Circuit Court has decided an important question of local law, in a way that is in conflict with applicable local decisions. (See Point (1), Part B of the petition.)**

The status of the surface estate and mineral estate, after severance, is not now an open question in Texas. The horizontal severance is just as effectual in creating two distinct estates, in fee simple, as a vertical severance; and each estate is separate and distinct from the other, and of equal dignity.

Humphreys-Mexia Company v. Gammon, 113 Texas 247, 254 S.W. 296.

The horizontal separation of the fee into two estates may be accomplished by deed, reservation, or lease—and, if by lease, the lessee is the owner of a determinable *fee simple estate* in the minerals.

Sheffield v. Hogg, 124 Texas 290, 77 S.W. (2d) 1021;  
Waggoner's Estate v. Sigler, 118 Texas 509, 19 S.W. (2d) 27.

Once severed, the mineral estate is "as foreign and distinct from the estate in the surface as though each were a separate and distinct tract of land."

Armstrong v. Humble Oil & Refining Company, 145 S.W. (2d) 692, writ of error dismissed by Supreme Court, correct judgment;

Humphreys-Mexia Company v. Gammon, 113 Texas 247, 254 S.W. 296.



So conclusive is the doctrine adverted to, and so well is it established by Texas law, that our courts speak of "horizontal" severance in the same sense as they speak of "vertical" severance.

Clements v. Texas Company, 273 S.W. 993;  
 Texas Company v. Daugherty, 107 Texas 226, 176 S.W. 717, 719;  
 Henderson v. Chesley, 273 S.W. 299, error refused by the Supreme Court 116 Texas 355, 292 S.W. 156;  
 Pierce Fordyce Oil Association v. Woodrum (T.C.A.), 188 S.W. 245;  
 17 Texas Jurisprudence 105, Par. 5;  
 31 Texas Jurisprudence 548, Par. 23.

This petition does not raise a challenge as to the correctness of the general principles of law announced by the Circuit Court—that a condemnation proceeding is an action *in rem*; that it is not the taking of "rights" of designated persons, but the taking of the property itself; or, that the amount paid for the property stands in the place of the property and represents all interests in the property acquired (R. 781). The challenge is directed to:

(1) The Circuit Court's treatment of the *separate, distinct* estates—mineral and surface—as merely "rights" held by the respective owners in the land, contrary to Texas law, which fixes the status of what the Circuit Court terms mere "rights" as *separate, distinct freeholds*, as foreign to each other as would be separate tracts of land.

(2) The application of the principles of law above adverted to, to the subject matter of this suit upon the theory that the estates involved are component parts of a whole; rather than applying such principles of law to each estate separately in accordance with Texas law

which fixes their status as separate "wholes," in and of themselves, and in the same sense as though they were separate tracts of land.

The judgment of the Circuit Court of Appeals here complained of is contrary in principle to one of its own decisions which recognized and applied the Texas law of severance.

WEST V. COMMISSIONER OF INTERNAL REVENUE, 150 Fed. (2d) 723.

### ***Point B***

**The Circuit Court has rendered a decision in conflict with applicable decisions of this Court. (See Point (2), Part B, of the Petition.)**

That the local law of the State is to be applied in trials and appeals in Federal Courts is no longer an open question.

Erie Railway Co. v. Tompkins, 304 U.S. 64;  
Ruhlin v. New York Life Insurance Co., 304 U.S. 202.

The refusal of the Circuit Court to apply the local law of Texas in the instant case is patent upon the face of the record and from the written opinion of the Court (R. 779).

### ***Point C***

**The Circuit Court in the case at bar has rendered a decision in conflict with the decision of the Circuit Court of Appeals, Eighth Circuit, in the case of U. S. v. Bechtold Company, 129 Fed. (2d) 473. (See Point (3), Part B, of the petition.)**

The Federal Government, though the sovereign, in acquiring the title to lands through proceedings in condemnation is in no better position than any other condemnor. It must accept the status of the title as that status is determined by local law, and perfect its condemnation in accordance with the status of the title as thus determined. The Circuit Court of Appeals, Eighth Circuit, in the BECKTOLD case so correctly held.

This Court made the same pronouncement in: *BOSTON CHAMBER OF COMMERCE V. BOSTON*, 217 U.S. 189.

### Conclusion

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that the judgment of the Circuit Court of Appeals, Fifth Circuit, be reviewed and the cause remanded to the trial court for trial in accordance with the principles of local law in Texas, and to that end, a writ of certiorari should be granted and this Court should review the decision of the Circuit Court of Appeals, Fifth Circuit and finally reverse it.

Respectfully submitted,

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